

Remarks/Arguments

Rejection of Claims 1, 2, 4, 21, and 22 under 35 U.S.C. 102(b)

The Examiner rejected Claims 1, 2, 4, 21, and 22 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,216,938 (Yamaguchi).

Claim 1

Yamaguchi does not teach an electric motor for a torque transmission device

Amended Claim 1 recites: “wherein the second torque transmission device (116) is an electric motor.”

It appears that the Examiner is asserting that change gear mechanism 11 of Yamaguchi (clutches and brakes) disclosed by Yamaguchi is analogous to torque transmission devices (114, 116) recited in Claim 1. Assuming *arguendo* that mechanism 11 is otherwise analogous to torque transmission devices (114, 116), it is clear that neither the clutches nor the brakes of change gear mechanism 11 are electric motors.

Yamaguchi does not teach the configuration and function recited in Claim 1

Claim 1 recites: “determining, using the electronic engine control unit (132) and the signals received or transmitted by the electronic engine control unit (132), whether there is a functional impairment in the torque transmission device (114, 116) or, actuation device (106), or the electronic transmission control unit (110); and limiting, using the electronic engine control unit (132), maximum permissible engine torque of the combustion engine when the electronic engine control unit (132) has determined a functional impairment in the torque transmission device (114, 116) or, the actuation device (106), or the electronic transmission control unit (110)”

The excerpts cited by the Examiner are rather broad and non-specific; however, the more detailed portions of Yamaguchi do not teach Claim 1. In fact, in the paper filed November 17, 2008, Applicants showed that Yamaguchi does not teach the connections and determinations recited in Claim 1.

In general, Yamaguchi teaches monitoring sensors and operating actuators in a fail-safe

manner, for example as taught in the first paragraph of the Summary. Further, Yamaguchi teaches shifting a transmission to a lower gear/torque output, but does not appear to teach limiting torque to a maximum permissible level, for example, in col. 5, lines 34-46/lines 58-61.

Assuming *arguendo* that the change gear mechanism 11 of Yamaguchi is otherwise analogous to actuation device (106) recited in Claim 1, there is no connection between engine control computer 5 or transmission control computer 14, and mechanism 11. The only connection is between computer 14 and valves/solenoids 15, 16, and 15a/b. Computer 14 can detect problem with the controls for 11 (the valves/solenoids), but has no way of knowing the condition of 11. For example, the valves/solenoids could fail and mechanism 11 could be intact, or mechanism 11 could fail while the valves/solenoids are still intact.

For all the reasons noted above, Yamaguchi does not teach each and every element of Claim 1 and Claim 1 is novel with respect to Yamaguchi. Claims 21 and 22, dependent from Claim 1, also are novel with respect to Yamaguchi.

Claim 2

Yamaguchi does not teach an electric motor for an actuation device

Amended Claim 2 recites: “wherein the actuation device (106) is an electric motor.”

It appears that the Examiner is asserting that change gear mechanism 11 of Yamaguchi is analogous to actuation device (106) recited in Claim 2. Assuming *arguendo* that mechanism 11 is otherwise analogous to actuation device (106), it is clear that neither the clutches nor the brakes of change gear mechanism 11 are electric motors.

Yamaguchi does not teach the configuration and function recited in Claim 2

Claim 2 recites: “comprising: determining whether the electronic transmission control unit (110), actuation device (106), or the torque transmission device (114) is functionally impaired; and limiting maximum permissible engine torque of the combustion engine (124) when it is determined that the electronic transmission control unit (110), the actuation device (106), or the torque transmission device (114) is functionally impaired.”

One difference between Claims 1 and 2 is that in Claim 2, impairments are recited for control unit (110), actuation device (106), and torque transmission device (114), while torque transmission device (116) is not recited. Claims 2 also does not explicitly recite unit (132) determining the impairments. However, in general, the discussion regarding Claim 1 is applicable to Claim 2.

For all the reasons noted above, Yamaguchi does not teach each and every element of Claim 2 and Claim 2 is novel with respect to Yamaguchi. Claim 4, dependent from Claim 2, also is novel with respect to Yamaguchi.

Applicants courteously request that the rejection be removed.

Objections to the Claims

Claim 23 was objected to as being dependent upon a rejected base claim. Applicants have shown that Claim 1 is allowable; therefore, Claim 23 no longer depends from a rejected base claim.

Applicants courteously request that the objection be removed.

Claim Allowance

Applicants gratefully acknowledge the allowance of Claims 3 and 5.

Conclusion

Applicant respectfully submits that all pending claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,

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